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Applicant: PRUITT et al
Application No. 10/765,030
Filed: January 27th, 2004
For: ROTARY MOWER CONDITIONER HAVING IMPROVED CUT CROP FLOW
Assignee: AGCO Corporation
Examiner *believed to be Meredith C. Petravick*
Group *believed to be 3671*
Reissue of U.S. 6,158,201

U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, Virginia 22202
U.S.A.

PROTEST

A copy of the above PROTEST as filed on June 16th 2004 is enclosed herewith together with a copy of the stamped acknowledgement card dated June 16, 2004 confirming that the PROTEST was received at USPTO.

A review of the USPTO internet data base indicates and a telephone conversation with Examiner Petravick has confirmed that this protest has NOT been entered on the record for this application and thus has apparently been LOST.

A copy of this Protest was served by Courier on the Attorney of Record for the above application, Stephen D. Timmons, at the same date as the original submission of this protest to United States Patent Office.

It is requested that this PROTEST be entered on the file and reviewed by the Examiner prior to Examination

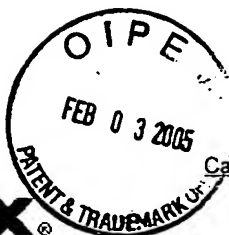
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Respectfully submitted
MACDON INDUSTRIES LTD.

PER: _____
Adrian D. Battison
Registration No: 31,726

ADB/II
February 2, 2005
Enc.(10)
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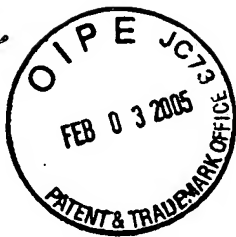
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RECEIPT OF THE FOLLOWING ENVELOPES:**

PLEASE RETURN TO: Ade & Company
1700-360 Main Street
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R3C 3Z3

FED EX WAYBILL :

June 15, 2004

1. 80070-2880 ADB – MacDon Industries Ltd.
Filing Protest – US Patent 6,158,201
2. 80070-2880 ADB – MacDon Industries Ltd.
Filing Protest – US Patent 5,433,064
3. 80070-2880 ADB – MacDon Industries Ltd.
Filing Protest – US Patent – 5,463,852

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**THE PATENT OFFICE HEREBY ACKNOWLEDGES
RECEIPT OF THE FOLLOWING**

DATE: June 14/04

Protest, form PTO 1449, (5) patent copies – ROTARY
MOWER CONDITIONER HAVING IMPROVED CUT CROP
FLOW

APPLICANT: Pruitt et al

SERIAL NO: 10/765,030

FILE NO: 80070-2880 ADB





Applicant: PRUITT et al

Application No. 10/765,030

Filed: January 27th, 2004

For: ROTARY MOWER CONDITIONER HAVING IMPROVED CUT
CROP FLOW

Assignee: AGCO Corporation

Reissue of U.S. 6,158,201

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U.S.A.

COPY

PROTEST

A copy of this Protest has been served by Courier on the Attorney of Record for this application Stephen D. Timmons at the same date as submission of this protest to United States Patent Office.

BACKGROUND INFORMATION

The Examiner is advised by way of background information that the Protestor herein is MacDon Industries Ltd. of Winnipeg, Manitoba, Canada. Protestor has been developing a machine which is of the type generally disclosed in this patent which is a Rotary (or Disk) Mower with a conditioner. Protestor intends to manufacture such a machine using well known concepts and designs, which are clearly established in the prior art before the relevant date of this patent, and thus are outside the scope of the claims of this patent.

For this reason it is important that the claims be fully clear with no potential for dispute as to the scope so that MacDon can clearly determine what designs are freely available to them.

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For this reason it is important that the claims do not include subject matter which is merely obvious from the many prior art documents. The purpose of the present PROTEST is therefore to provide information to the Examiner to assist in this task. It is hoped that by this action, costly litigation to determine the scope of ambiguous or unclear claims or to determine that certain features are merely obvious, can be avoided.

PRIOR ART

The present application for reissue is based upon prior art brought to the attention of the Applicant by the Protestor. Applicants have also listed many further documents. For the assistance of the Examiner, Protestor cites from the long list of prior art listed by the Applicants the following important references which are submitted to be particularly pertinent. However the Protestor does not admit that the prior art cited herein is the most relevant nor the only relevant prior art and other prior art may need to be considered.

US	4,330,982	Vissers
US	5,272,859	Pruitt
US	5,433,064	Schmitt

In addition Protestor now refers to ADDITIONAL prior art not listed by Applicants as follows:

US	3,014,324	McCarty
US	2,906,077	Hale

BRIEF COMMENTS ON MOST RELEVANT ART

Schmitt 064 and Pruitt 859 both disclose rotary mowers with a plurality of cutter disks rotating about vertical axes defining a horizontal cutting plane. The outer disks have cylindrical impeller cages to carry the cut crop inwardly toward a discharge opening. In the discharge opening is located a pair of horizontal conditioning rolls

having a nip through which the cut crop passes. Schmitt Figure 2 shows a cross-sectional view. These elements are conventional and shown in many patents.

Vissers 982 discloses in Figure 6 a series of rotary cutters 35 similar to those of Pruitt 859 and Schmitt, each of which is rotatable about an individual upright axis, and which together form a horizontal cutting plane across the width of the mower. Also in Figure 6 is shown a pair of conditioning rollers 70 which extend transversely or laterally across the mower and define a nip which is clearly from the drawing above and rearwardly relative to the cutting plane. The conditioning rollers 70 are narrower than the cutting zone and located in a discharge opening. Figure 6 also discloses a roller 57 which rotates in a direction which is counter clockwise when viewed from the end as shown by the arrow 62 so that it defines a portion or surface that moves upwardly and rearwardly from the cutting plane to the nip to convey the crop cut by the cutting disks toward the nip. Vissers uses helical flights on end pieces of the roller 70 to carry the crop inwardly down from the end disks to the discharge opening. The roller 70 may have a diameter as small as 20cm (column 4, line 6).

Hale 077 discloses (see the side elevation in Figure 3) conditioner rollers 50, 51 of a conditioner C for crushing a crop in a nip therebetween. In front of the conditioner rollers is mounted a rotating member 65, 67 in the general form of a roller which rotates counterclockwise to feed crop upwardly and rearwardly into the nip. Forwardly of the roller 65 is located a cutting assembly or mower M. This is not shown as a disk type cutter but is apparently a sickle blade type cutter. However it is clear that each of these types of cutters defines a horizontal cutting plane which in practice is as close to the ground as possible. The roller 65 is shown as being smaller in diameter than the conditioner rollers. The roller 65 is (from Figure 2 and from common sense) the same length as the conditioner rollers. The axis of the roller 65 is as close to the ground as practical and thus is approximately at the same height as the cutter plane.

McCarty 324 discloses (see Figure 1) a pair of conditioner rollers 16 and 18 feeding into a nip therebetween. A roller 50 in front of and below the nip of the

conditioner roller rotates in a direction to feed crop into the nip. The roller 50 as shown in Figure 2 is the same length as the conditioner rollers. The conditioner rollers are stated (column 1, line 45) to have a diameter of 12 inches (30cm). The roller 50 is shown as being smaller in diameter (note that Vissers 982 discloses that a roller of 20cm can be used).

UNCLEAR CLAIMS UNDER 35 U.S.C. 112

The following terms appearing in the claims may lead to the claims being ambiguous:

- a) *"generally vertically aligned"* which appears in Claims 1, 12 and 23.

The term "generally" makes the claim indeterminate in scope. It is noted that the specification gives no guidance on the scope of this term. The drawing Figure 7 shows the axis above the plane of the blades. If there is a critical range either side of the specific location then it is submitted that the Applicants should have disclosed it and have chosen not to do so. In the absence of a stated range they must be limited to the specific location stated.

- b) *"relatively smaller diameter"* which appears in Claim 9, 20 and 30.

The term "relatively" is unclear since the statement "smaller" is specific and is rendered unclear by the addition of a qualifier.

PROPER BASIS UNDER 35 U.S.C. 112

It should be noted that MPEP at 2163.01 states that if a claim is not supported (described) in an application as filed this would result in a rejection under 35 U.S.C.112. It is clear from this and from 2163.02 that it is the written description which must be considered and NOT the drawings. New claims or claims with new features must be carefully considered in respect of proper basis as set forth in 2163.

It should be noted in respect of Claim 40 that the claim says "*said conveyor roller being disposed within said discharge opening*" whereas the specification

at column 9 lines 25,26 says "*the conveying roller is mounted within the header 24 to span the discharge opening*". This states therefore that the conveyor roller is mounted within the header and does NOT say that it is located in the discharge opening. It may be mounted in the discharge opening or in front of it and there is no disclosure in this regard. It does say that it spans the discharge opening which discloses that the roller has a length AT LEAST sufficient to equal the width of the opening but does not state whether this "spanning" is done within the opening or in front of the opening.

PATENTABILITY UNDER 35 U.S.C. 102 OR 103

Applicants have admitted in the reissue application that original Claim 1 is anticipated by Vissers 982.

In the re-issue application, Applicants have amended their claims so as to add the following important features, which propose to distinguish from Vissers 982.

Claims 1, 12 and 23 (see also dependant Claims 11, 22, 32 and 43)

The horizontal cutting plane defined by the blades is "*generally vertically aligned with the roller axis*".

Vissers discloses (column 3 lines 30 to 34) that "*the bottom side of the rotor 63 is located at an even lower level than the plane of movement of the knives 26*". This is shown in Figures 2 and 4. Thus it is clear that the roller (rotor 63) is located at a very low level and the position of the center of the roller relative to the knife plane is thus merely a matter of geometry and particularly the diameter of the roller. While the drawing shows a large diameter roll, use of the disclosed diameter of 20cm (so that the axis is only 4 inches above the bottom of the roller) means that Vissers discloses that the cutting planes is generally vertically aligned with the axis.

Furthermore, if one were to take the geometry of the cutting blades and the conditioner rollers shown in Figure 2 of Pruitt 859 (which is the same disclosure as Schmitt 064 but Schmitt 064 does not include the same drawing which is convenient for review) and add into it the roller of Vissers, it is clear that, in order to fit such a roller into

the available space, the diameter of the roller so added would be small 20cm (8 inches) in diameter, (slightly less than that of the conditioner rollers) and the location of the axis would be relatively low that is approximately at the height of the plane of the cutting blades. This is not only the obvious geometry it is indeed the only possible geometry.

Yet further, Hale 077 discloses that both the cutting plane and the roller are as close as possible to the ground so that the plane and the axis are generally vertically aligned.

It is submitted therefore that independent Claims 1, 12 and 23 (and the dependent claims referred to above) are either anticipated by Vissers alone or are obvious in view of Vissers and Pruitt 859 (Schmitt 064) or Vissers and Hale or all three.

Claim 9, 20 and 30 (see also dependant Claims 6, 9, 17 and 41)

The "conveying roller has a relatively smaller diameter than the conditioning rolls".

Vissers states that the cylinder (roller) has a diameter "preferably more than 20cms" (emphasis added) and therefore specifically discloses a cylinder (roller) which has a diameter which is 20cms. (The use of the word "preferably" indicates that it could also be less than 20cms, although that is not preferred) Conditioner rollers are typically of the order of 20 to 25 cms, as is well known to one skilled in the art. Thus even at the diameter specifically mentioned it is less than typical conditioner rollers. These claims are therefore anticipated by Vissers. Hale and McCarty disclose in the drawings that the roller feeding to the conditioner roller nip is smaller than the conditioner rollers. McCarty states that typical conditioner rollers can be 30 cm. Thus even if not anticipated by Vissers, this feature is entirely obvious from a combination of Vissers and Hale or McCarty.

Claim 25 (see also dependant Claims 2, 13, 33, 44 and 45)

Two sets of outboard cutters and "a pair of crop conveying assemblies each disposed over one of the set of outboard cutters".

Vissers discloses two sets of outboard cutters and the roller and conditioner. Also in Vissers is disclosed the crop conveying assemblies (Flight strip 69) disposed (at least partly) over the outboard cutters as shown in Figures 2, 4 and 5. Thus this claim is anticipated by Vissers.

More specifically, it is clear from Vissers that the rollers 70 define or are part of a discharge opening. This discharge opening is relatively narrow in comparison with the width of the cutter so that at least one and part of a second cutter disc is spaced outwardly from the outer end of the discharge opening defined by the length of the rolls 70. The roller 57 includes conveying assemblies defined by the helical strip 69 which is wound in opposite directions at opposite ends of the roller 57. The strip 69 is stated in column 3 to "*throw the crop over and across the worm rotor 63 to the rear on the field or into a crushing device 47.*" The strip 69 thus acts as a conveying assembly which is disposed over the outboard cutter discs for conveying the crop rearwardly and inwardly to the discharge opening.

Crop conveying assemblies in the form of impeller cages or cylindrical members are well known from Pruitt 859 or Schmitt 064. These are merely well established features entirely obvious to one skilled in the art. There can be no invention therefore in combining these well known features.

Claim 40 (see also dependant Claims 6, 17, 30)

The "*conveyor roller being disposed within said discharge opening and spanning the same*".

The point above concerning the lack of proper basis for this claim in the description as filed should be noted. It is submitted that the claim should read as based on the description *the conveying roller is mounted within the header 24 to span the discharge opening.*

If properly presented in this manner then this is clearly disclosed in Vissers since the roller of Vissers is mounted in the header and spans the discharge opening.

In the event that Applicants amend this claim with regard to dependent Claims 3, 14, 26, 34 and 46 the use of impeller cages as a conveyor in replacement for the helical strip 69 is well known from Schmitt 064. There is nothing patentable therefore presented in these claims and all are obvious in view of a combination of Vissers and Schmitt 064.

With regard to dependent Claims 4, 15, 22, 35 and 47 reference is made to Schmitt 064 above which discloses the impellers including the first and second impellers and the intermediate impeller as discussed above which are prior art.

With regard to dependent Claims 5, 7, 16, 18, 28, it is clear from Vissers 982 at Figures 2 or 4 that there is an open area between the surface of the roller 57 and the rear of the cutting discs and is prior art. McCarty also discloses an open area around the roller.

With regard to dependent Claims 8, 19 and 29 from Vissers the conveying roller 57 has the rib 69 previously described extending along the roller periphery and having opposite inclination on either side of the mid point of the conveying roller.

With regard to dependent Claims 10, 21, 31, 39 and 42 from Vissers it is clear from viewing Figure 6 that the axis of the roller 57 is below the axis of the lower conditioning roller. Also see Hale and McCarty

With regard to dependent Claims 36 and 48, the axis of the impeller and the cutter is disclosed in Schmitt 064.

With regard to dependent Claims 37 and 49, the upright impeller cages are shown in Schmitt 064.

It is submitted that based on the above analysis all claims should be rejected as anticipated under 35 U.S.C. 102 by Vissers or as obvious in view of a

combination of Vissers with Schmitt 064 (or Pruitt 859) or a combination of Vissers with Hale or McCarty.

With regard to the motivation to make the combinations set forth above, Pruitt 859 and/or Schmitt 064 are well known references disclosing the starting point for the later work by Pruitt in the present application. The problem stated in the present application is that stated in Column 1 lines 17 to 21 where it is stated

"Specifically, it is believed that the crop material has difficulty in moving from the cutter to the upwardly and rearwardly spaced nip defined between the conditioning rolls"

This exact problem is addressed and solved in Vissers by providing the roller which is located at basically the same location moving in the same direction as the claimed invention. If any problem were to arise with the geometry of the parts, reference to other documents which provide a solution to the transport of crop to the conditioner roll nip, that is Hale or McCarty, resolve these difficulties leading to a combination of components as defined in the claims which is merely a combination of these references.

Respectfully submitted

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June 14, 2004

Enc.(7)

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